

22 DEC 1987

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REMARKS

Senate passed HR 3395
 Technical Corrections Act.
 with amendment # 1372
 (attached)

House version sent
 earlier.

Will be no conference
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D 1662**CONGRESSIONAL RECORD — DAILY DIGEST****December 19, 1987**

Bushland Research Laboratory," and the bill was then passed.

Page S18502

Gifts for Fine Art in the Capitol: Senate passed H.R. 60, to permit the Architect of the Capitol, under the direction of the Joint Committee on the Library, to accept gifts of money for the purchase of works of fine art for the Capitol, after agreeing to Byrd Amendment No. 1371, in the nature of a substitute.

Page S18502

Veterans' Employment and Education Amendments of 1987: The action of the Senate in indefinitely postponing (on August 4) of S. 999, to amend title 38, United States Code, and the Veterans' Job Training Act, to improve veterans employment, counseling, and job-training services and programs, and, upon reconsideration, the bill was passed, after agreeing to a committee amendment thereto.

Page S18504

Selection of Court for Multiple Appeals: The Committee on the Judiciary was discharged from the further consideration of H.R. 1162, to amend title 28, United States Code, to provide for the selection of the court of appeals to decide multiple appeals filed with respect to the same agency order, and the bill was then passed.

Page S18508

Establishing Title of States for Certain Abandoned Shipwrecks: Senate passed S. 858, to establish the title of States in certain abandoned shipwrecks, after agreeing to a committee amendment in the nature of a substitute.

Page S18509

Selection of Court for Multiple Appeals: Senate passed S. 1134, to amend title 28, United States Code, to provide for the selection of the court of appeals to decide multiple appeals filed with respect to the same agency order.

Page S18511

Urging Emigration of Soviet Spouses: Senate passed H.J. Res. 430, calling upon the Soviet Union to immediately grant permission to emigrate to all those who wish to join spouses or fiances in the United States.

Page S18512

Federal Employees' Retirement System: Senate passed H.R. 3395, to make technical corrections relating to the Federal Employees' Retirement System, after agreeing to Byrd (for Pryor and Stevens) Amendment No. 1372 an amendment proposed thereto, as follows:

Byrd (for Pryor and Stevens) Amendment No. 1372, to amend chapters 83 and 84 of title 5, United States Code, to provide for the participation of certain employees under the Federal Employees' Retirement System, to provide for a refund of certain

excess deductions, to amend provisions relating to retirement credit for employees, government contributions to Thrift Savings Plans, and adjustments in methods of annuity payments.

Page S18561

Prepayment of Loans made to State and Local Development Companies: Senate passed S. 437, to amend the Small Business Investment Act of 1958, to permit prepayment of loans made to State and local development companies, after agreeing to a committee amendment in the nature of a substitute and an amendment proposed thereto, as follows:

Byrd (for Bumpers) Amendment No. 1373, to provide that the Federal Financing Bank may impose a prepayment penalty on issuers of debentures who elect to pay those debentures before maturity according to a certain schedule.

Page S18510, S18565

Computation of Income under Food Stamp and AFDC Programs: The Committee on Agriculture, Nutrition, and Forestry was discharged from the further consideration of H.R. 3435, to provide that certain charitable donations, and payments for blood contributed, shall be excluded from income for purposes of the food stamp program and the AFDC program, and the bill was passed, after agreeing to Byrd (for Leahy and Lugar) Amendment No. 1374, in the nature of a substitute.

Page S18572

Funding for the Committee on Agriculture, Nutrition, and Forestry: By 52 yeas to 35 nays (Vote No. 416), Senate agreed to S. Res. 304, to increase the amount allocated to the Committee on Agriculture, Nutrition, and Forestry by S. Res. 80, relating to committee funding for fiscal year 1988.

Page S18471

Committee Funding Resolutions: By 64 yeas to 22 nays (Vote No. 417), Senate agreed to the following resolutions:

S. Res. 306, to authorize supplemental expenditures for the Committee on Armed Services;

S. Res. 311, to authorize supplemental expenditures by the Committee on Finance;

S. Res. 319, to authorize supplemental expenditures by the Committee on Veterans' Affairs;

S. Res. 321, to consolidate and authorize supplemental expenditures by the Select Committee on Indian Affairs;

S. Res. 322, to authorize supplemental expenditures by the Committee on Appropriations; and

S. Res. 325, to authorize supplemental expenditures by the Committee on Rules and Administration.

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would be in light of the progress that had been made.

ORDERS FOR SUNDAY, DECEMBER 20, 1987

RECESS UNTIL 6 P.M.

Mr. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 6 p.m. tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, I am authorized by the distinguished Republican leader to proceed with the following items which have been cleared for action by unanimous consent.

TECHNICAL CORRECTIONS RELATING TO THE FEDERAL EMPLOYEES' RETIREMENT SYSTEM

Mr. BYRD. Mr. President, I ask unanimous consent to proceed to the consideration of Calendar Order No. 390.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3395) making technical corrections relating to the Federal Employees' Retirement System, and for other purposes.

The Senate proceeded to consider the bill.

AMENDMENT NO. 1372

(Purpose: To amend chapters 83 and 84 of title 5, United States Code, to provide for the participation of certain employees under the Federal Employees' Retirement System to provide or a refund of certain excess deductions, to amend provisions relating to retirement credit for employees, government contributions to Thrift Savings Plans, adjustments in methods of annuity payments, and for other purposes)

Mr. BYRD. Mr. President, on behalf of Senators PRYOR and STEVENS I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from West Virginia (Mr. BYRD), for Mr. PRYOR (for himself and Mr. STEVENS), proposes an amendment numbered 1372.

Mr. BYRD. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 4, line 7, insert "for at least 3 years" after "(B)".

On page 4, line 9, insert before the period "and insert in lieu thereof 'for at least 3 years'".

On page 16, line 2, strike out "or".

On page 16, line 4, strike out the period and insert in lieu thereof a semicolon.

On page 16, insert between lines 4 and 5 the following:

(C) a contract under which the services of an individual may be terminated by a person other than the individual or the Government; or

(D) a contract for a single transaction or a contract under which services are paid for in a single payment.

On page 29, beginning with line 12, strike out all through line 18.

On page 35, strike line 18 and all that follows through page 36, line 10, and insert in lieu thereof the following:

(c) APPLICABILITY.—This section applies with respect to—

(1) any individual participating in the Civil Service Retirement System or the Federal Employees' Retirement System as—

(A) an individual who has entered on approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of employees (as defined by section 8331(1) or 8401(1) of title 5, United States Code);

(B) an individual assigned from a Federal agency to a State or local government under subchapter VI of chapter 33 of title 5, United States Code; or

(C) an individual appointed or otherwise assigned to one of the cooperative extension services, as defined by section 1404(5) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3105(5)); and

(2) any individual who is participating in the Civil Service Retirement System as a result of a provision of law described in section 8347(c).

On page 36, line 18, strike "subsection (c)(3)," and insert "subsection (c)(1)(C)."

On page 38, line 4, strike out the period and insert in lieu thereof a semicolon and "and".

On page 38, insert between lines 4 and 5 the following:

(3) by amending clause (v) by striking out "at the time of filing such application" and inserting in lieu thereof "on May 7, 1987".

SEC. 12A. REFUNDS OF CERTAIN EXCESS DEDUCTIONS TAKEN AFTER 1983 TO OFFSET EMPLOYEES UNDER THE CIVIL SERVICE RETIREMENT SYSTEM.

(a) REFUND ELIGIBILITY.—An individual shall upon written application to the Office of Personnel Management, receive a refund under subsection (b), if such individual—

(1) was subject to section 8334(a)(1) of title 5, United States Code, for any period of service after December 31, 1983, because of an election under section 208(a)(1)(B) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 (97 Stat. 1107; 5 U.S.C. 8331 note);

(2) is not eligible to make an election under section 301(b) of the Federal Employees' Retirement System Act of 1986 (Pub. Law 99-335; 100 Stat. 599); and

(3) becomes subject to section 8334(k) of title 5, United States Code.

(b) REFUND COMPUTATION.—An individual eligible for a refund under subsection (a) shall receive a refund—

(1) for the period beginning on January 1, 1984, and ending on December 31, 1986, for the amount by which—

(A) the total amount deducted from such individual's basic pay under section 8334(a)(1) of title 5, United States Code, for service described in subsection (a)(1) of this section, exceeds

(B) 1.3 percent of such individual's total basic pay for such period; and

(2) for the period beginning on January 1, 1987, and ending on the day before such individual becomes subject to section 8334(k) of title 5, United States Code, for the amount by which—

(A) the total amount deducted from such individual's basic pay under section

8334(a)(1) of title 5, United States Code, for service described in subsection (a)(1) of this section, exceeds

(B) the total amount which would have been deducted if such individual's basic pay had instead been subject to section 8334(k) of title 5, United States Code, during such period.

(c) INTEREST COMPUTATION.—A refund under this section shall be computed with interest in accordance with section 8334(e) of title 5, United States Code, and regulations prescribed by the Office of Personnel Management.

SEC. 12B. ADJUSTMENTS IN METHODS OF ANNUITY PAYMENTS FOR YEARS WITH ZERO OR NEGATIVE INFLATION.

Section 8334(a)(2)(C) and (D) of title 5, United States Code, is amended to read as follows:

"(C) a method described in subparagraph (A) which provides for automatic adjustments in the amount of the annuity payable so long as the amount of the annuity payable in any one year shall not be less than the amount payable in the previous year;

"(D) a method described in subparagraph (B) which provides for automatic adjustments in the amount of the annuity payable so long as the amount of the annuity payable in any one year shall not be less than the amount payable in the previous year; and"

SEC. 12C. COVERAGE UNDER THE FEDERAL EMPLOYEES' RETIREMENT SYSTEM FOR INDIVIDUALS SUBJECT TO THE FOREIGN SERVICE PENSION SYSTEM WHO ENTER FEDERAL EMPLOYMENT OTHER THAN THE FOREIGN SERVICE.

Section 8402 of title 5, United States Code, is amended—

(1) in the matter following subparagraph (B) of paragraph (2) of subsection (b) by inserting "subsection (d) of this section or" before "title III"; and

(2) by inserting after subsection (c) the following new subsection (d):

"(d) Paragraph (2) of subsection (b) shall not apply to an individual who becomes subject to subchapter II of chapter 8 of title I of the Foreign Service Act of 1980 (relating to the Foreign Service Pension System) pursuant to an election and who subsequently enters a position in which, but for such paragraph (2), he would be subject to this chapter."

SEC. 131. ANNUITY COMPUTATIONS FOR THE FEDERAL EMPLOYEES' RETIREMENT SYSTEM.

(a) SURVIVOR REDUCTION COMPUTATION.—Section 8419(a) of title 5, United States Code, is amended—

(1) in paragraph (1) by striking out "shall be reduced" and inserting in lieu thereof "or one-half of the annuity, if jointly designated for this purpose by the employee or Member and the spouse of the employee or Member under procedures prescribed by the Office of Personnel Management, shall be reduced"; and

(2) in paragraph (2)(A) by striking out "shall be reduced" and inserting in lieu thereof "or one-half of the annuity, if jointly designated for this purpose by the employee or Member and the spouse of the employee or Member under procedures prescribed by the Office of Personnel Management, shall be reduced".

(b) SURVIVOR BENEFITS.—Section 8442 of title 5, United States Code, is amended—

(1) in subsection (a)(1) by inserting after "with respect to the annuitant," the following: "(or one-half thereof, if designated for this purpose under section 8419 of this title)."; and

(2) in subsection (g)(1) by inserting after "paragraph (2)" the following: "(or one-half

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thereof if designated for this purpose under section 8419 of this title).

AM. 132. LOANS FROM EMPLOYEES' CONTRIBUTION TO THE THRIFT SAVINGS FUND.

Section 8433(h)(3) of title 5, United States Code, is amended to read as follows:

"(3) Loans under this subsection shall be available to all employees and Members on a reasonably equivalent basis, and shall be subject to such other conditions as the Board may by regulation prescribe. The restrictions of section 8477(c)(1) of this title shall not apply to loans made under this subsection."

SEC. 133. FIDUCIARY RESPONSIBILITIES AND LIABILITIES IN MANAGEMENT OF THRIFT SAVINGS FUND.

(a) FIDUCIARY RESPONSIBILITIES AND LIABILITIES.—Section 8477(e) of title 5, United States Code, is amended—

(1) in paragraph (1)(A) by inserting before the period at the end of the first sentence a comma and "except as provided in paragraphs (3) and (4) of this subsection";

(2) in paragraph (1)(B) by striking out "Internal Revenue Code of 1954" and inserting in lieu thereof "Internal Revenue Code of 1986";

(3) in paragraph (1)(D) by inserting "only" before "if" in the matter preceding clause (i);

(4) by redesignating paragraphs (4) and (5) as paragraphs (7) and (8), respectively; and

(5) by striking out paragraphs (2) and (3) and inserting in lieu thereof:

"(2) No civil action may be maintained against any fiduciary with respect to the responsibilities, liabilities, and penalties authorized or provided for in this section except in accordance with paragraphs (3) and (4).

"(3) A civil action may be brought in the district courts of the United States—

"(A) by the Secretary of Labor against any fiduciary other than a Member of the Board or the Executive Director of the Board—

"(i) to determine and enforce a liability under paragraph (1)(A);

"(ii) to collect any civil penalty under paragraph (1)(B);

"(iii) to enjoin any act or practice which violates any provision of subsection (b) or (c);

"(iv) to obtain any other appropriate equitable relief to redress a violation of any such provision; or

"(v) to enjoin any act or practice which violates subsection (g)(2) or (h) of section 8472 of this title;

"(B) by any participant, beneficiary, or fiduciary against any fiduciary—

"(i) to enjoin any act or practice which violates any provision of subsection (b) or (c);

"(ii) to obtain any other appropriate equitable relief to redress a violation of any such provision;

"(iii) to enjoin any act or practice which violates subsection (g)(2) or (h) of section 8472 of this title; or

"(C) by any participant or beneficiary—

"(i) to recover benefits of such participant or beneficiary under the provisions of subchapter III of this chapter, to enforce any right of such participant or beneficiary under such provisions, or to clarify any such right to future benefits under such provisions; or

"(ii) to enforce any claim otherwise cognizable under sections 1346(b) and 2671 through 2680 of title 28, if the remedy against the United States provided by sections 1346(b) and 2672 of title 28 for damages for injury or loss of property caused by the negligent or wrongful act or omission of any fiduciary while acting within the scope

of his duties or employment is exclusive of any other civil action or proceeding by the participant or beneficiary for recovery of money by reason of the same subject matter against the fiduciary (or the estate of such fiduciary) whose act or omission gave rise to such action or proceeding, whether or not such action or proceeding is based on an alleged violation of subsection (b) or (c).

"(4)(A) In all civil actions under paragraph (3)(A), attorneys appointed by the Secretary may represent the Secretary (except as provided in section 518(a) of title 28), however all such litigation shall be subject to the direction and control of the Attorney General.

"(B) The Attorney General shall defend any civil action or proceeding brought in any court against any fiduciary referred to in paragraph (3)(C)(ii) (or the estate of such fiduciary) for any such injury. Any fiduciary against whom such a civil action or proceeding is brought shall deliver, within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon such fiduciary (or an attested copy thereof) to the Executive Director of the Board, who shall promptly furnish copies of the pleading and process to the Attorney General and the United States Attorney for the district wherein the action or proceeding is brought.

"(C) Upon certification by the Attorney General that a fiduciary described in paragraph (3)(C)(ii) was acting in the scope of such fiduciary's duties or employment as a fiduciary at the time of the occurrence or omission out of which the action arose, any such civil action or proceeding commenced in a State court shall be—

"(i) removed without bond at any time before trial by the Attorney General to the district court of the United States for the district and division in which it is pending; and

"(ii) deemed a tort action brought against the United States under the provisions of title 28 and all references thereto.

"(D) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28, and with the same effect. To the extent section 2672 of title 28 provides that persons other than the Attorney General or his designee may compromise and settle claims, and that payment of such claims may be made from agency appropriations, such provisions shall not apply to claims based upon an alleged violation of subsections (b) or (c).

"(E) For the purposes of paragraph (3)(C)(ii) the provisions of sections 2650(h) of title 28 shall not apply to any claim based upon an alleged violation of subsection (b) or (c).

"(F) Notwithstanding sections 1346(b) and 2671 through 2680 of title 28, whenever an award, compromise, or settlement is made under such sections upon any claim based upon an alleged violation of subsection (b) or (c), payment of such award, compromise, or settlement shall be made to the appropriate account within the Thrift Savings Fund, or where there is no such appropriate account, to the participant or beneficiary bringing the claim.

"(G) For purposes of paragraph (3)(C)(ii), fiduciary includes only the Members of the Board and the Board's Executive Director.

"(5) Any relief awarded against a Member of the Board or the Executive Director of the Board in a civil action authorized by paragraphs (3) and (4) may not include any monetary damages or any other recovery of money.

"(6) An action may not be commenced under paragraph (3) (A) or (B) with respect to a fiduciary's breach of any responsibility,

duty, or obligation under subsection (b) or violation of subsection (c) after the enactment of—

"(A) 6 years after (i) the date of the action which constituted a part of a breach or violation, or (ii) in the case of an omission, the latest date on which the fiduciary could have cured the breach or violation; or

"(B) 3 years after the earliest date at which the plaintiff had actual knowledge of the breach or violation, except that, in the case of fraud or concealment, such action may be commenced not later than 6 years after the date of discovery of such breach or violation."

(b) EFFECTIVE DATE.—The provisions of section 8477(e) (1), (2), (3), (4), (5), and (6) of title 5, United States Code, (as amended by subsection (a) of this section) shall apply to any civil action or proceeding arising from any act or omission occurring on or after October 1, 1986.

(c) REPEAL.—The provisions of subsection (a) (and the amendments to section 8477(e) of title 5, United States Code, contained therein) and subsection (b) of this section are repealed effective on December 31, 1990. On and after December 31, 1990 the provisions of section 8477(e) of title 5, United States Code, shall be in effect as such provisions were in effect on the date immediately preceding the date of enactment of this section.

SEC. 134. AMENDMENTS CONCERNING REEMPLOYED ANNUITANTS.

(a) AMENDMENT TO CHAPTER 84 OF TITLE 5, UNITED STATES CODE.—Section 8468 is amended to read as follows:

"§ 8468. Annuities and pay on reemployment

"(a) If an annuitant, except a disability annuitant whose annuity is terminated because of the annuitant's recovery or restoration of earning capacity, becomes employed in an appointive or elective position, an amount equal to the annuity allocable to the period of actual employment shall be deducted from the annuitant's pay, except for lump-sum leave payment purposes under section 5551. Unless the annuitant's appointment is on an intermittent basis or is to a position as a justice or judge (as defined by section 451 of title 28) or as an employee subject to another retirement system for Government employees, or unless the annuitant is serving as President, deductions for the Fund shall be withheld from the annuitant's pay under section 8422(a) and contributions under section 8423 shall be made. The deductions and contributions referred to in the preceding provisions of this subsection shall be deposited in the Treasury of the United States to the credit of the Fund. The annuitant's lump-sum credit may not be reduced by annuity paid during the reemployment.

"(b)(1)(A) If an annuitant subject to deductions under the second sentence of subsection (a) serves on a full-time basis for at least 1 year, or on a part-time basis for periods equivalent to at least 1 year of full-time service, the annuitant's annuity on termination of reemployment shall be increased by an annuity computed under section 8415(a) through (f) as may apply based on the period of reemployment and the basic pay, before deduction, averaged during the reemployment.

"(B)(i) If the annuitant is receiving a reduced annuity as provided in section 8410, the increase in annuity payable under subparagraph (A) is reduced by 10 percent and the survivor annuity or combination of survivor annuities payable under section 8442 or 8445 (or both) is increased by 50 percent of the increase in annuity payable under

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subparagraph (A), unless, at the time of claiming the increase payable under subparagraph (A), the annuitant notifies the Office in writing that the annuitant does not desire the survivor annuity to be increased.

"(1) If an annuitant who is subject to the deductions referred to in subparagraph (A) dies while still reemployed, after having been reemployed for not less than 1 year of full-time service for the equivalent thereof, in the case of full-time employment, the survivor annuity payable is increased as though the reemployment had otherwise terminated.

"(2)(A) If an annuitant subject to deductions under the second sentence of subsection (a) serves on a full-time basis for at least 5 years, or on a part-time basis for periods equivalent to at least 5 years of full-time service, the annuitant may elect, instead of the benefit provided by paragraph (1), to have such annuitant's rights redetermined under this chapter.

"(B) If an annuitant who is subject to the deductions referred to in subparagraph (A) dies while still reemployed, after having been reemployed for at least 5 years of full-time service (or the equivalent thereof in the case of part-time employment), any person entitled to a survivor annuity under section 8442 or 8445 based on the service of such annuitant shall be permitted to elect, in accordance with regulations prescribed by the Office of Personnel Management, to have such person's rights under subchapter IV redetermined. A redetermined survivor annuity elected under this subparagraph shall be in lieu of an increased annuity which would otherwise be payable in accordance with paragraph (1)(B)(ii).

"(C) If an annuitant subject to deductions under the second sentence of subsection (a) serves on a full-time basis for a period of less than 1 year, or on a part-time basis for periods equivalent to less than 1 year of full-time service, the total amount withheld under section 8422(a) from the annuitant's basic pay for the period or periods involved shall, upon written application to the Office, be payable to the annuitant (or the appropriate survivor or survivors, determined in the order set forth in section 8424(d)).

"(e) This section does not apply to an individual appointed to serve as a Governor of the Board of Governors of the United States Postal Service.

"(d) If an annuitant becomes employed as a justice or judge of the United States, as defined by section 451 of title 28, the annuitant may, at any time prior to resignation or retirement from regular active service as such a justice or judge, apply for and be paid, in accordance with section 8424(a), the amount (if any) by which the lump-sum credit exceeds the total annuity paid, notwithstanding the time limitation contained in such section for filing an application for payment.

"(e) A reference in this section to an 'annuity' shall not be considered to include any amount payable from a source other than the Fund."

(b) AMENDMENT TO PERA.—Section 302(a)(12) of the Federal Employees' Retirement System Act of 1986 is amended to read as follows:

"(12)(A)(i) If the electing individual is a reemployed annuitant under section 8344 of title 5, United States Code, under conditions allowing the annuity to continue during reemployment, payment of the annuitant's annuity shall continue after the effective date of the election, and an amount equal to the annuity allocable to the period of actual employment shall continue to be deducted from the annuitant's pay and deposited as

provided in subsection (a) of such section. Deductions from pay under section 8422(a) of such title and contributions under section 8423 of such title shall begin effective on the effective date of the election.

"(ii) Notwithstanding any provision of section 301, an election under such section shall not be available to any reemployed annuitant who would be excluded from the operation of chapter 84 of title 5, United States Code, under section 8402(c) of such title (relating to exclusions based on the temporary or intermittent nature of one's employment).

"(B) If the annuitant serves on a full-time basis for at least 1 year, or on a part-time basis for periods equivalent to at least 1 year of full-time service, such annuitant's annuity, on termination of reemployment, shall be increased by a annuity computed—

"(i) with respect to reemployment service before the effective date of the election, under section 8339 (a), (b), (d), (e), (h), (i), and (n) of title 5, United States Code, as may apply based on the reemployment in which such annuitant was engaged before such effective date; and

"(ii) with respect to reemployment service on or after the effective date of the election, under section 8415(a) through (f) of such title, as may apply based on the reemployment in which such annuitant was engaged on or after such effective date;

with the 'average pay' used in any computation under clause (i) or (ii) being determined (based on rates of pay in effect during the period of reemployment, whether before, on, or after the effective date of the election) in the same way as provided for in paragraph (6). If the annuitant is receiving a reduced annuity as provided in section 8339(j) or section 8339(k)(2) of title 5, United States Code, the increase in annuity payable under this subparagraph is reduced by 10 percent and the survivor annuity payable under section 8341(b) of such title is increased by 55 percent of the increase in annuity payable under this subparagraph, unless, at the time of claiming the increase payable under this subparagraph, the annuitant notifies the Office of Personnel Management in writing that such annuitant does not desire the survivor annuity to be increased. If the annuitant dies while still reemployed, after having been reemployed for at least 1 full year (or the equivalent thereof, in the case of part-time employment), any survivor annuity payable under section 8341(b) of such title based on the service of such annuitant is increased as though the reemployment had otherwise terminated. In applying paragraph (7) to an amount under this subparagraph, any portion of such amount attributable to clause (i) shall be adjusted under subparagraph (A) of such paragraph, and any portion of such amount attributable to clause (ii) shall be adjusted under subparagraph (B) of such paragraph.

"(C)(i) If the annuitant serves on a full-time basis for at least 5 years, or on a part-time basis for periods equivalent to at least 5 years of full-time service, such annuitant may elect, instead of the benefit provided by subparagraph (B), to have such annuitant's rights redetermined, effective upon separation from employment. If the annuitant so elects, the redetermined annuity will become payable as if such annuitant were retiring for the first time based on the separation from reemployment service, and the provisions of this section concerning computation of annuity (other than any provision of this paragraph) shall apply.

"(ii) If the annuitant dies while still reemployed, after having been reemployed for at least 5 full years (or the equivalent thereof,

in the case of part-time employment), any person entitled to a survivor annuity under section 8341(b) of title 5, United States Code, based on the service of such annuitant shall be permitted to elect to have such person's rights redetermined in accordance with regulations which the Office shall prescribe. Redetermined benefits elected under this clause shall be in lieu of any increased benefits which would otherwise be payable in accordance with the next to last sentence of subparagraph (B).

"(D) If the annuitant serves on a full-time basis for less than 1 year (or the equivalent thereof, in the case of part-time employment), any amounts withheld under section 8422(a) of title 5, United States Code, from such annuitant's pay for the period (or periods) involved shall, upon written application to the Office, be payable to such annuitant (or the appropriate survivor or survivors, determined in the order set forth in section 8342(c) of such title).

"(E) For purposes of determining the period of an annuitant's reemployment service under this paragraph, a period of reemployment service shall not be taken into account unless—

"(i) with respect to service performed before the effective date of the election under section 301, it is service which, if performed for at least 1 full year, would have allowed such annuitant to elect under section 8344(a) of title 5, United States Code, to have deductions withheld from pay; or

"(ii) with respect to service performed on or after the effective date of the election under section 301, it is service with respect to which deductions from pay would be required to be withheld under the second sentence of section 8468(a) of title 5, United States Code."

(c) TECHNICAL AMENDMENT.—Section 302(a)(4) of the Federal Employees' Retirement System Act of 1986 is amended by striking out all before "benefits" and inserting "Accrued".

(d) EFFECTIVE DATE.—

(1) GENERALLY.—The amendments made by this section shall take effect on the date of the enactment of this Act, and as provided in paragraph (2), shall apply with respect to any individual who becomes a reemployed annuitant on or after such date.

(2) EXCEPTION.—The amendment made by subsection (b) shall apply with respect to any election made by a reemployed annuitant on or after the date of the enactment of this Act.

SEC. 135. DESIGNATION OF UNITED STATES POST OFFICE BUILDING.

The United States Post Office Building located at 809 Nueces Bay Boulevard, Corpus Christi, Texas, shall be designated and hereafter known as the "Dr. Hector Perez Garcia Post Office Building". Any reference in any law, map, regulation, document, record, or other paper of the United States to that building shall be deemed to be a reference to the "Dr. Hector Perez Garcia Post Office Building".

SEC. 136. CONTINUED COVERAGE FOR CERTAIN EMPLOYEES AND ANNUITANTS OF THE ALASKA RAILROAD IN FEDERAL HEALTH BENEFITS PLANS AND LIFE INSURANCE PLANS.

(a) AMENDMENT TO ALASKA RAILROAD TRANSFER ACT OF 1982.—Section 607 of the Alaska Railroad Transfer Act of 1982 (45 U.S.C. 1208) is amended by adding at the end thereof the following new subsection:

"(e)(1) Any person described under the provisions of paragraph (2) may elect life insurance coverage under chapter 87 of title 5, United States Code, and enroll in a health benefits plan under chapter 89 of title 5,

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United States Code, in accordance with the provisions of this subsection.

"(2) The provisions of paragraph (1) shall apply to any person who—

"(A)(i) retired from the State-owned railroad during the period beginning on or after January 4, 1985 through the date of enactment of this subsection; and

"(ii)(I) was covered under a life insurance policy pursuant to chapter 87 of title 5, United States Code, on January 4, 1985, for the purpose of electing life insurance coverage under the provisions of paragraph (1); or

"(II) was enrolled in a health benefits plan pursuant to chapter 89 of title 5, United States Code, on January 4, 1985, for the purpose of enrolling in a health benefits plan under the provisions of paragraph (1); or

"(B)(i) on the date of enactment of this subsection is an employee of the State-owned railroad; and

"(ii)(I) has 26 years or more of service (in the civil service as a Federal employee or as an employee of the State-owned railroad, combined) on the date of retirement from the State-owned railroad; and

"(II)(aa) was covered under a life insurance policy pursuant to chapter 87 of title 5, United States Code, on January 4, 1985, for the purpose of electing life insurance coverage under the provisions of paragraph (1); or

"(bb) was enrolled in a health benefits plan pursuant to chapter 89 of title 5, United States Code, on January 4, 1985, for the purpose of enrolling in a health benefits plan under the provisions of paragraph (1).

"(3) For purposes of this section, any person described under the provisions of paragraph (2) shall be deemed to have been covered under a life insurance policy under chapter 87 of title 5, United States Code, and to have been enrolled in a health benefits plan under chapter 89 of title 5, United States Code, during the period beginning on January 5, 1985 through the date of retirement of any such person.

"(4) The provisions of paragraph (1) shall not apply to any person described under paragraph (2)(B), until the date such person retires from the State-owned railroad."

(b) **ADMINISTRATIVE PROVISIONS.**—Within 180 days after the date of enactment of this section, the Director of the Office of Personnel Management shall notify any person described under the provisions of section 607(e)(2)(A) of such Act, for the purpose of the election of a life insurance policy or the enrollment in a health benefits plan pursuant to the provisions of section 607(e)(1) of the Alaska Railroad Transfer Act of 1982 (as amended by subsection (a) of this section).

Sec. 137. Section 5402 of title 39, United States Code, is amended—

(1) in subsection (f) by striking out "January 1, 1989" and inserting in lieu thereof "January 1, 1999"; and

(2) by adding at the end thereof the following new subsection:

"(g)(1) The Postal Service, in selecting carriers of non-priority bypass mail to any point served by more than one carrier in the State of Alaska, shall, at a minimum, require that any such carrier shall—

"(A) hold a certificate of public convenience and necessity issued under section 401 of the Federal Aviation Act of 1958 (49 U.S.C. 1371);

"(B) operate at least 3 scheduled flights each week to such point;

"(C) exhibit an adherence to such scheduled flights to the best of the abilities of such carrier; and

"(D) have provided scheduled service within the State of Alaska for at least 12

months before being selected as a carrier of non-priority bypass mail.

"(2) The Postal Service—

"(A) may provide direct mainline non-priority bypass mail service to any bush point in the State of Alaska, without regard to paragraph (1)(B), if such service is equal to or better than interline service in cost and quality; and

"(B) shall deduct the non-priority bypass mail poundage flown on direct mainline flights to bush points within the State of Alaska by any carrier, from such carrier's allocation of the total poundage of non-priority bypass mail transported to the nearest appropriate Postal Service hub point in any month.

"(3)(A) The Postal Service shall determine the bypass mail bush points and hub points described under paragraph (2)(B) after consultation with the State of Alaska and the affected local communities and air carriers.

"(B) Any changes in the determinations of the Postal Service under subparagraph (A) shall be made—

"(i) after consultation with the State of Alaska and the affected local communities and air carriers; and

"(ii) after giving 12 months public notice before any such change takes effect.

On page 40, line 7, insert after "Representatives" the following: "and the Committee on Governmental Affairs".

Mr. PRYOR. Mr. President, I am joined today by Senator STEVENS in offering a package of amendments to H.R. 3395, a bill making technical corrections relating to various Federal retirement systems.

Last July, we passed the Federal Employees Retirement System Act of 1986 [FERSA]. This legislation created an entirely new retirement system, the Federal Employees Retirement System [FERS]. This was a sweeping change in the Federal retirement system and took years to develop. Senator STEVENS was instrumental in leading the effort to develop FERS and I am pleased to be working with him on this legislation.

As with many complicated pieces of legislation, FERSA overlooked some issues and in other areas, clarifications are necessary. The House Post Office and Civil Service Committee developed a comprehensive set of technical amendments to FERS, the Civil Service Retirement System, the Foreign Service Retirement System, and the Foreign Service Pension System.

Senator STEVENS and I have reviewed H.R. 3395 and have put together a package of 14 amendments to the House-passed bill. Many of these were suggested by executive branch agencies as further improvements. The package includes:

An amendment to section 103 to require law enforcement officers and firefighters to spend at least 3 years "on the street" in order to be eligible for the early retirement provision. FERSA contained a requirement that law enforcement officers and firefighters be "on the street" for at least 10 years. Law enforcement and firefighter officials were concerned that this requirement would create severe hardship in recruiting and retaining these individuals. H.R. 3395 would strike the provision in its entirety. Our amend-

ment would ensure that the early retirement benefit was not abused while not adversely affecting law enforcement officers and firefighters.

An amendment to section 110 to clarify that retirement credit will not be extended to employees of contracts that could be terminated by a party other than the individual or the Government, or to employees of contracts let for a specific transaction. This addresses the concerns of the Office of Personnel Management [OPM] that this section would give unintended benefits to contractor employees.

An amendment to section 125 to clarify that the class of employees referenced in section 108 of H.R. 3395 can participate in the thrift savings plan [TSP]. Because these individuals do not receive a Federal paycheck, there may be a question as to whether they are eligible to participate in the plan. However, we feel that they, like any other CSRS employee, should be able to participate in the thrift savings plan.

An amendment to section 127 to insure that H.R. 3395, while extending the deadline for applications for benefits under the Spouse Equity Act, does not inadvertently enlarge the class of individuals eligible for such benefits.

An addition of section 128 to refund excess CSRS contributions to employees who become subject to the CSRS offset provision by statute, rather than by choice. Current law only allows such refunds if the individual chooses to participate in the CSRS offset provision.

An addition of section 129 to allow the Thrift Investment Board to tie its annuity distribution to an index similar to the Consumer Price Index but not to decrease amounts paid under such annuities in those years where there is negative inflation. Current statutory language does not satisfy tax regulations and may inadvertently create problems for participating employees.

An addition of section 130 to ensure that a participant in the Foreign Service Pension System who enters the civil service will be covered by FERS, not CSRS. This ensures that CSRS is a closed system and prevents the anomalous situation of a person moving from a "new" retirement system into the "old" retirement system.

An addition of section 131 to provide for a variable base survivors annuity. An employee would be able to select from the options of providing no survivor annuity, a survivor annuity based on one-half of the employee's annuity or a survivor annuity based on all of the employee's annuity. This addresses Senator STEVENS' concern that FERS retirees be granted some flexibility in providing a survivors annuity, so that retirees can assure their survivors continued coverage under the Federal Employees Health Benefit [FEHB] Program.

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An addition of section 132 to clarify that the Thrift Investment Board has the sole authority to determine the appropriate interest rate for loans made from the TSP. Under FERSA, the Thrift Investment Board has the authority to determine an appropriate interest rate for loans made under section 8433(d), title 5, United States Code. However, under certain circumstances, the rate determined by the Board under FERSA may not be appropriate for employee benefit plans subject to the Employee Retirement Income Security Act of 1974 (ERISA). Therefore, the specific reference to ERISA is deleted in this amendment, while the reference to the requirement that these loans be made on a reasonably equivalent basis is retained from the language of section 408(b)(1) of ERISA. In addition, section 8477(c)(1) of FERSA relating to adequate consideration is made inapplicable to loans made under this subsection to eliminate any ambiguity with respect to the interpretation and application of this section.

An addition of section 133 to provide for the indemnification of the fiduciaries of the Thrift Investment Board. The fiduciaries are defined as the Board members and the executive director. Any other fiduciaries would be private, and therefore are not indemnified by this provision. This addresses the concerns of the fiduciaries that, given the inadequacy of available insurance, they are personally liable for their actions as fiduciaries of the fund.

An addition of section 134 to clarify provisions regarding reemployed annuitants. Current law does not provide clear guidelines for the treatment of reemployed annuitants.

An addition of section 135 naming the Dr. Hector Perez Garcia Post Office Building in Corpus Christi, TX.

An addition of section 136 extending to certain employees and retirees of the Alaska Railroad coverage under the FEHB Program and the Federal Employees Group Life Insurance Program. This ensures that these individuals do not lose health or life insurance benefits due to the transfer of the Alaska Railroad from the Federal Government to the State of Alaska.

An addition of section 137 to guarantee uninterrupted mail service to rural areas in Alaska.

An amendment to section 202 to include Senate Governmental Affairs as an additional recipient of regulations to be issued by the Secretary of State regarding retirement benefits for former spouses.

Mr. President, this package of amendments contains simple clarifications or technical changes and will rectify various oversights in FERSA. I urge its speedy adoption.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from West Virginia.

The amendment (No. 1372) was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read the third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (H.R. 3395) was passed.

Mr. BYRD. Mr. President, I ask unanimous consent that the motion to reconsider be laid on the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDING THE SMALL BUSINESS INVESTMENT ACT OF 1958

Mr. BYRD. Mr. President, I ask unanimous consent to proceed to the consideration of Calendar Order No. 491.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 437) to amend the Small Business Investment Act of 1958 to permit prepayment of loans made to State and local development companies.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which was reported from the Committee on Small Business, with an amendment in the nature of a substitute.

(The amendment in the nature of a substitute was printed earlier in today's RECORD.)

AMENDMENT NO. 1373

Mr. BYRD. Mr. President, I call up an amendment by Mr. BUMPERS to the committee substitute.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from West Virginia (Mr. BYRD) on behalf of Mr. BUMPERS proposes an amendment numbered 1373.

Mr. BYRD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At line 9, on page 3 of the Committee Amendment, strike the comma after the word "debenture" and insert the following: "plus a prepayment penalty as described in subparagraph (c)."

On page 3, line 21, of the Committee Amendment insert the following new subparagraph (c) and renumber the existing subparagraphs accordingly:

(c) The Federal Financing Bank may impose a prepayment penalty on issuers of debentures who elect to pay those debentures before maturity according to the following schedule:

(1) For debentures with ten years or less remaining before maturity, a penalty not to

exceed 40 percent of an amount equal to the annual interest on the outstanding principal balance of the debenture at the coupon rate.

(2) For debentures with more than ten years but less than 15 years remaining before maturity, a penalty not to exceed fifty percent of an amount equal to the annual interest on the outstanding principal balance of the debenture at the coupon rate.

(3) For debentures with more than fifteen years but less than 20 years before maturity, a penalty not to exceed sixty percent of an amount equal to the annual interest on the outstanding principal balance of the debenture at the coupon rate.

(4) For debentures with more than twenty years remaining before maturity, a penalty not to exceed seventy percent of an amount equal to the annual interest on the outstanding balance of the debenture at the coupon rate.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment.

The amendment (No. 1373) was agreed to.

The PRESIDING OFFICER. If there are no further amendments, the question is on agreeing to the committee substitute.

The committee substitute was agreed to.

The PRESIDING OFFICER. If there is no further debate, the bill is deemed read the third time.

The bill having been deemed read the third time, the question is on the passage of the bill.

The bill (S. 437) was passed as follows:

S. 437

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

In title V of the Small Business Investment Act of 1958, insert the following new section:

Sec. 506. (a) DEFINITIONS.—(1) As used in this section, "issuer" means the issuer of a debenture which has been purchased by the Federal Financing Bank pursuant to section 503 of this Act.

(2) "Borrower" means the small business concern whose loan secures a debenture issued pursuant to section 503 of this Act.

(b) The issuer of a debenture purchased by the Federal Financing Bank and guaranteed under section 503 of this Act may at the election of the borrower prepay such debenture by paying to the Federal Financing Bank the outstanding principal balance and accrued interest due on the debenture at the coupon rate on the debenture plus a prepayment penalty as described in subparagraph: *Provided, That:*

(1) the loan that secures the debenture is not in default on the date the prepayment is made;

(2) private capital, with or without the existing debenture guarantee, is used to prepay the debenture, and provided further that if private capital with the existing debenture guarantee is used, such refinancing may be done solely pursuant to sections 504 and 505 of this Act;

(3) the issuer of the debenture certifies that the benefits associated with prepayment of the debenture are entirely passed through to the borrower.

(c) The Federal Financing Bank may impose a prepayment penalty on issuers of debentures who elect to pay those debentures